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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,288	09/11/2003	Michael Zung	6771USP4	5342
57360 7590 06/28/2007 WORKMAN NYDEGGER 1000 EAGLE GATE TOWER, 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111			EXAMINER MENDOZA, MICHAEL G	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 06/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/660,288

Applicant(s)

ZUNG ET AL.

Examiner

Michael G. Mendoza

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see remarks pgs 6-8, filed 5/1/2007, with respect to the rejection(s) of claim(s) 1, 3, 5, 8, 11-16, and 19 under 35 USC 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of Andreas et al. 6036699.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 5, 7, 11, 12-14, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Andreas et al. 6036699.

4. As to claim 1, 3, 5, 7, and 11, Andreas et al. teaches a suturing device comprising: a housing 402; a shaft 404 at least partially disposed within a portion of the housing and extending distally from a distal end of the housing; a needle 410 movable within a needle lumen 420 associated with the shaft and that extends toward a proximal end of the housing, the needle being attached to a length of suture 422; and a suture cutting blade 24 positioned on the housing; wherein the housing further includes a proximal end, and the blade is positioned near the distal end of the housing (see fig.

Art Unit: 3734

9a); wherein the needle and the suture are withdrawn from the proximal end of the housing (see figs. 2a-2b and 24a) wherein the blade is mounted on an outside of the housing (see fig. 9a); and wherein the needle has a distal end and the suture is attached to the distal end of the needle.

5. As to claims 12-14, 16, and 18, Andreas et al. teaches a suturing device comprising: a housing 402 having a proximal end and a distal end; a suture cutting 24 blade positioned on the housing; an elongate shaft 404 at least partially disposed within the housing and extending distally from the distal end of the housing, the elongate shaft having a distal end region; a needle actuation handle 430 movable through the proximal end of the housing; a needle 410 extending from the needle actuation handle, through the housing and further through a needle lumen associated with the shaft that extends toward the proximal end of the housing; and a suture 422 carried by the device, wherein a portion of the suture is positioned near the distal end region of the shaft such that the needle pulls the suture proximally to position the suture through tissue (see figs. 2a-2b); wherein the blade is positioned near the distal end of the housing (see fig. 9a); wherein the needle pulls the suture through the proximal end of the housing (see fig. 24a); wherein the needle and the suture are withdrawn from the proximal end of the housing (see figs. 2a-2b and 24a); and wherein the blade is mounted on the outside of the housing.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 8, 9, 10, 15, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andreas et al. as applied above, in view of Ogburn RE 22857.

8. Andreas et al. discloses the invention substantially as claimed except for various locations of the suture-cutting blade. However, In re Japikse held that claims that read on the prior art except with regard to the position of a claimed element were held unpatentable if shifting the position of the claimed element would not have modified the operation of the device. 181 F.2d 1019; 86 USPQ 70 (CCPA 1950). Simple relocation of the suture-cutting blade does not modify the operation of the claimed device, but merely relocates the location of drawing the suture across the blade.

9. Furthermore, Ogburn discloses that it is old and well known in the art to use a stationary suture cutting blade on the housing of a medical suturing device for the purpose of severing the suture after it has been applied to the wound (col. 1, lines 29-32; col. 2, lines 11-13; and col. 4, lines 3-10; See also figs. 1-3 and 11-13, reference numerals 51-54). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a stationary suture cutting blade near the proximal end of the housing, on an outside of the housing, on a finger grip on the

Art Unit: 3734

housing, or on a movable handle of the device of Yoon, in order to gain the advantage of being able to sever the suture after it has been applied to the wound, as taught by Ogburn.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MM



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER